

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
WAYDE HARRISON and BONNIE ERICKSON, :
doing business as HARRISON ERICKSON, :
a partnership, :

Plaintiffs, : 79 Civ. 2663 (HFW)

-against- :

THE PHILADELPHIA NATIONAL LEAGUE :
CLUB, INC., doing business as :
THE PHILLIES, :

Defendant. :
-----x

AFFIDAVIT OF PLAINTIFF
ERICKSON SUBMITTED IN
SUPPORT OF APPLICATION
FOR TEMPORARY RESTRAIN-
ING ORDER AND PRELIM-
INARY INJUNCTION

STATE OF NEW YORK)
:ss.:
COUNTY OF NEW YORK)

BONNIE ERICKSON, being duly sworn deposes and says:

1. I am one of the plaintiffs herein and a partner with plaintiff WAYDE HARRISON in HARRISON ERICKSON, a creative design enterprise. This affidavit is submitted in support of plaintiffs' application by order to show cause for a temporary restraining order and preliminary injunction restraining and enjoining defendant, and its respective agents, servants, employees, officers, subsidiaries and affiliates, and all persons and organizations acting in active concert or participation with defendant, from directly or indirectly (a) making,

producing, manufacturing, selling or in any way exploiting unauthorized reproductions of plaintiffs' copyrighted artistic sculpture, entitled the Phillie Phanatic (hereinafter referred to as the "Phanatic"), or authorizing or permitting any others to do such acts; (b) infringing plaintiffs' copyright in the Phanatic in any way; (c) authorizing or permitting the use of the Phanatic in association with any commercial products; and (d) exploiting any reproductions of The Phanatic unless the quality is approved by plaintiffs and plaintiffs' copyright notice is properly affixed to each copy.

2. The Phanatic presently is used by defendant as the mascot for the Philadelphia Phillies, its major league baseball team. Plaintiffs are the authors and copyright proprietors of the Phanatic. Annexed hereto made a part thereof and marked Exhibits "1" and "1(a)", respectively, is a copy of the certificate of copyright registration issued to plaintiffs by The United States Copyright Office and a copy of a photograph of the Phanatic deposited with the registration. This action was instituted to prevent (a) unauthorized uses of the Phanatic by defendant in various reproductions, including in assorted articles of merchandise and printed advertisements for commercial products and (b) false representations and misdescriptions in commerce in connection with defendant's uses of reproductions of the Phanatic, including by sometimes using plaintiffs' names in connection with poor quality reproductions of the Phanatic and sometimes omitting any reference to plaintiffs in connection with reproductions of the Phanatic.

Plaintiffs also plead a claim herein for rescission of its merchandising agreement authorizing defendant to exploit reproductions of the Phanatic, based upon defendant's repeated, substantial breaches of the agreement which plaintiffs' claim resulted in destroying the essence of the consideration plaintiffs should receive thereunder. A copy of the merchandising agreement is annexed hereto, made a part hereof and marked Exhibit "2".

PLAINTIFFS' BACKGROUND

3. Plaintiffs operate a unique creative design enterprise at their New York City studio. Prior to forming the partnership with plaintiff WAYDE HARRISON, I worked for six years as a designer with Henson Associates, Inc., creators and designers of the Sesame Street and Muppet Show characters. During my employment, I developed the highly popular Miss Piggy and the team of Statler and Waldorf, all soft foam puppet characters. Since the formation of Harrison Erickson, plaintiffs have created and designed numerous highly acclaimed characters and soft foam puppets, including the THREE BEARS, which were used in national television commercials for H O OATS; SIR SHAKE-A-LOT and BURGER THING, both used for a nation wide Burger King advertising campaign; SUNNY and FOSSIL, used by the National Education Association in the crusade for energy conservation; and mascot characters and costumes for defendant's Philadelphia Phillies, the Montreal Expos and the New York Yankees, all major league

baseball teams, and for the Philadelphia 76ers, a professional basketball team. Plaintiffs also created SLEEPY BEAR, a soft toy exploited nationally by Knickbocker Toy Company, together with various other toys. Annexed hereto made a part hereof and collectively marked Exhibit "3" is a reproduction of several information cards distributed by plaintiffs, each reproducing one of plaintiff's creations on the front and vital statistics on the back.

4. Annexed hereto, made a part hereof and collectively marked Exhibit "4" are copies of news articles which feature the details of plaintiffs' business, from such diverse publications as The New York Trib, The Philadelphia Daily News and Sports Illustrated. As a result of highly selective business practices plaintiffs have been able to achieve and maintain a uniform reputation for high quality products. One of the main reasons plaintiffs achieved their reputation is that reproductions of plaintiffs' copyrighted creations are monitored by plaintiffs under agreements with users whereby plaintiffs retain strict quality control. Plaintiffs invariably require the use of the best available materials for proposed reproductions and insist upon faithfulness of the design of the proposed reproductions to their original source. Plaintiffs also offer additional creative suggestions, which generally enhance the aesthetic appeal of the proposed reproductions. Defendant are usurping virtually all of plaintiffs' quality control in producing

reproductions of the Phanatic and, by utilizing poor quality reproductions, has created a serious threat to plaintiffs' hard earned reputation. In addition, defendant repeatedly ignores the Copyright Law requirements that all published reproductions of the Phanatic must bear proper copyright notice.

5. Plaintiffs first created the Phanatic in the form of a costume to be worn by a performer at the Phillies home games. The Phanatic made its first appearance in April, 1978 and became enormously popular. Sports Illustrated calls the Phanatic a "celebrity". The Phanatic is described in the 1979 Phillies Yearbook as "first in the heart of the kids," "a part of every [1978 home] baseball game," "one of us" and "the strange, new green thing...[who] has made his presence known." (p.47). Annexed hereto made a part hereof and collectively marked Exhibit "5" is a copy of newspaper photographs of the Phanatic featured this year in the Philadelphia Inquirer and nationwide by United Press International. As a result of the enormous public appeal of the Phanatic, it is a natural for merchandise tie-ins.

6. Consistent with our quality control policies, the agreement with defendant authorizing it to produce the Phanatic in various articles of merchandise (Exhibit 2) contains the following express limitations:

(a) 2. As an express condition precedent to your right to make reproductions, each proposed Licensed Article shall be submitted

to us in the form in which you intend to manufacture it. For a period of ten working days following receipt by us of each proposed Licensed Article, we shall have the right in our sole discretion to determine whether the proposed reproduction satisfies our personal quality standards. You shall not manufacture any Licensed Article of any kind unless (a) you have first submitted to us the proposed Licensed Article and (b) we do not object to the quality within the ten working day period. Any subsequent modifications must first be approved by us in the same manner, before you incorporate the changes in the Licensed Article. Our approval of any proposed reproduction or modification shall not be unreasonably withheld.

* * * *

(b) 3. Copies of all Licensed Articles made by you, or presently in your possession or control, shall bear copyright notice in our name in the proper location as follows:

"©1978 Harrison Erickson."

* * * *

(c) 4. . . . Promptly after the commencement of manufacture, you shall supply us with 5 complete copies of each Licensed Article from the first quantity manufactured by or for you.

* * * *

(d) 6. Except as expressly authorized herein, and in our agreement dated March 17, 1978, you shall have no right to make any use of the Phillie Phanatic character.

The uses authorized in the March agreement are uses of the costume and do not bear upon the merchandise rights.

7. From virtually the inception of the merchandise agreement, defendant repeatedly has ignored the express conditions to its right to exploit reproductions of the Phanatic.

As a result plaintiffs have become aware of the following reproductions of the Phanatic exploited by defendant and not authorized by plaintiffs because of defendant's failure to meet the express conditions of the contract.

1978

(a) Keychains with an unapproved reproduction and no copyright notice. In response to plaintiffs' objections, defendant's attorney represented it was physically impossible to change the configuration or imprint the notice in time for a Keychain Day which defendant would not postpone. Defendant's attorney also then represented by letter that "there are no outstanding orders for merchandise which do (sic) not contain the copyrighted (sic) notice."

(b) Pennants - Poor quality reproduction not submitted for approval and copyright notice omitted. A copy of the reproduction is annexed hereto made a part hereof and marked Exhibit "6".

(c) Tee shirts - same as pennants. A copy of the reproduction is annexed hereto made a part hereof and marked Exhibit "7".

(d) Dolls - not submitted for approval. 15,000 sold by defendant without copyright notice properly affixed. Defendant notified plaintiffs of the sales after the sales were made. The design quality is not acceptable to plaintiffs. A copy of one of the dolls purchased by my partner in Philadelphia this month, and the accompanying purchase receipt is annexed hereto made a part hereof and marked Exhibit "8".

(e) Miscellaneous - team promotional literature such as advertising and promotional pieces using reproductions of

the Phanatic in presently unknown quantities and not submitted for approval of the reproductions.

1979

(f) Comic strip - Plaintiffs approved the use of the Phanatic for a daily newspaper comic strip. None of the required samples were supplied by defendant. All copies seen by me contain an illegible acknowledgment of plaintiffs copyright, contrary to an express condition to the use of the Phanatic for that purpose. A copy of one of the strips is annexed hereto made a part hereof and marked Exhibit "9".

Schedule - Low grade reproduction used in connection with promotion of Girard Bank. Use not even disclosed by defendant until late April. No copyright notice. A copy of the reproduction is annexed hereto made a part hereof and marked Exhibit "10".

Program/Scorecard - Low grade reproduction used to plug MAB Paints. Never submitted for approval, recently discovered. Photograph also used without approval to plug Medford's hot dogs. A copy of the reproductions are annexed hereto made a part hereof and respectively marked Exhibits "11" and "12".

Dolls - See details below.

Miscellaneous - Tie tack, glass mugs, tote bag, advertisements and promotional literature all use reproductions of the Phanatic. Not submitted for approval and samples not supplied, except three glass mugs received this month.

8. During the past several months, plaintiffs have tried to avoid litigation with defendant by negotiation of plaintiffs' claims. Although defendant repeatedly represented it was prepared to meet its obligations to use plaintiffs' copyright notice on all reproductions and to follow the approval procedures, plaintiffs finally were forced to conclude that defendant was not serious. Each settlement discussion revealed further unauthorized uses and a continuation of defendant's flagrant refusal to meet the express conditions of plaintiffs' authorization for reproductions. A brief summary of the exploitation of dolls and the use of the Phanatic as a product salesman well illustrate the point.

9. Defendant's conduct with respect to the manufacture and sale of dolls reveals a thoroughly reprehensible scheme to circumvent plaintiffs right of quality control. As aforesaid, when a sample was first revealed to plaintiffs in late 1978, plaintiffs were told by defendant that defendant sold 15,000 dolls. Defendant also then advised plaintiffs other dolls were ordered. In an attempt to exercise our quality control, I visited the doll manufacturer's plant in Korea in January, 1979. I made various corrections to a prototype, including in its proportions, eye shape, eyebrows, shoe laces, tongue and copyright notice. A copy of my letter to one of defendant's vice presidents confirming the foregoing is annexed hereto made, a part hereof and marked Exhibit "13". On March 19, 1979, I received so-called "production samples" in New York City although I recently discovered that the dolls had been manufactured and shipped by that time. I

notified both the manufacturer and defendant's vice president by letter dated March 20, 1979, that changes I made in Korea were not incorporated and other changes were unsuccessful. I requested "corrected production samples," because defendant withheld disclosure of the fact that the dolls were already manufactured and shipped. Defendant clearly was making a mockery of my examination and proposed corrections. A copy of my letter is annexed hereto made a part hereof and marked Exhibit "14". By telephone conversation with our attorney in late March, 1979, defendant's vice president revealed that in November, 1978 defendant actually acquired 30,000 dolls, sold 10,000 and recently sold the remaining 20,000; that another 25,000 were then due to be received by defendant from the manufacturer (approximately a 30 day trip at sea, confirming that the submission of "production samples" was pure deceit); that another 25,000 were due to be received by defendant from the manufacturer in May; and that only the latter 25,000 possibly could be corrected. A copy of the letter from plaintiffs' attorney to defendant's attorney confirming the deceit is annexed hereto, made a part hereof and marked Exhibit "15". Upon information and belief, defendant continues to sell all dolls in unapproved form, without copyright notice and without any satisfactory quality control. Defendant's dolls are an embarrassment. Annexed hereto made a part hereof and marked Exhibit "16" is a composite, consisting of a side-by-side comparison of defendant's doll and the Phanatic. Defendant's doll is a gross misrepresentation of our artistic product. It looks more like a plush poodle sold in Woolworth's

than the Phanatic.

10. In addition to the previously mentioned commercial uses of the Phanatic as huckster for paints and hot dogs, plaintiffs recently discovered that in February, 1979 defendant authorized Mt. Ephraim Dodge to make a reproduction of the Phanatic on a Dodge van and granted it advertising concessions. A written authorization was issued by defendant to Mt. Ephraim Dodge in February, 1979, but defendant made no disclosure to plaintiffs until after plaintiffs discovered the use and plaintiffs' attorney wrote to defendant's attorney on May 3, 1979. A copy of defendant's February authorization is annexed hereto, made a part hereof and marked Exhibit "17". The merchandise agreement does not authorize use of the Phanatic for product promotions.

11. In certain instances, defendant has referred to plaintiffs as the source of unauthorized reproductions of poor quality by using their name on the reproductions. That poses a real threat to our reputation for high quality, and our entire future. We are just beginning to enjoy substantial business growth. A set back now, based upon false attribution of poor quality products, could forever destroy our business potential. Similarly, whenever we are not referred to as the copyright proprietor of approved reproductions, we lose the opportunity to enhance our reputation because the purchasing public is not told we are the creators. In either event, we necessarily will suffer

incalculable harm. We already have been told by one of our customers that the Phanatic dolls he saw are of very poor quality not up to our usual standards.

12. The reason this application is being brought on by order to show cause is that late last week I discovered that defendant has been dealing with another pennant designer who stated he is prepared to manufacture a pennant with defendant's authorization, which includes an unapproved reproduction of the Phanatic. In addition, the unapproved dolls are widely offered for sale and defendant appears to be taking no steps to correct the defects. Accordingly, I believe immediate action by this court is necessary to protect our commercial integrity and preserve our reputation for high quality.

13. No prior application has been made for the relief sought herein.

WHEREFORE, it is respectfully submitted that plaintiffs application should be granted in all respects.

Bonnie Erickson

Sworn to before me this
day of May, 1979

Sandra Anteri
Notary Public

SANDRA ANTERRI
Notary Public, State of New York
No. 41-5129300
Qualified in Queens County
Commission Expires March 30, 1980

(SEAL IMPRESSED HERE)

This certificate, issued under the seal of the Copyright Office in accordance with the provisions of section 410(a) of title 17, United States Code, attests that copyright registration has been made for the work identified below. The information in this certificate has been made a part of the Copyright Office records.

Barbara Ringer
Register of Copyrights
United States of America

REGISTRATION NUMBER	
VA	23-748
VA	VAU
EFFECTIVE DATE OF REGISTRATION	
MAY	4 1979
Month	Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED ADDITIONAL SPACE, USE CONTINUATION SHEET (FORM VA/CON)

1 Title	TITLE OF THIS WORK:	NATURE OF THIS WORK: (See instructions)
	PHILLIE PHANATIC	Artistic Sculpture
	Previous or Alternative Titles:	
PUBLICATION AS A CONTRIBUTION: (If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared.)		
Title of Collective Work: Vol. No. Date. Pages		

2 Author(s)	IMPORTANT: Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). If any part of this work was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates blank.		
	1	NAME OF AUTHOR:	DATES OF BIRTH AND DEATH:
		WAYDE HARRISON	Born Died
		Was this author's contribution to the work a "work made for hire"? Yes No. <input checked="" type="checkbox"/>	(Year) (Year)
	1	AUTHOR'S NATIONALITY OR DOMICILE:	WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK:
		Citizen of United States or { Domiciled in }	Anonymous? Yes No. <input checked="" type="checkbox"/>
		(Name of Country) (Name of Country)	Pseudonymous? Yes No. <input checked="" type="checkbox"/>
	1	AUTHOR OF: (Briefly describe nature of this author's contribution)	If the answer to either of these questions is "Yes," see detailed instructions attached.
		CO-AUTHOR ARTISTIC SCULPTURE	
	2	NAME OF AUTHOR:	DATES OF BIRTH AND DEATH:
		BONNIE ERICKSON	Born Died
Was this author's contribution to the work a "work made for hire"? Yes No. <input checked="" type="checkbox"/>		(Year) (Year)	
2	AUTHOR'S NATIONALITY OR DOMICILE:	WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK:	
	Citizen of United States or { Domiciled in }	Anonymous? Yes No. <input checked="" type="checkbox"/>	
	(Name of Country) (Name of Country)	Pseudonymous? Yes No. <input checked="" type="checkbox"/>	
2	AUTHOR OF: (Briefly describe nature of this author's contribution)	If the answer to either of these questions is "Yes," see detailed instructions attached.	
	CO-AUTHOR ARTISTIC SCULPTURE		
3	NAME OF AUTHOR:	DATES OF BIRTH AND DEATH:	
		Born Died	
	Was this author's contribution to the work a "work made for hire"? Yes No.	(Year) (Year)	
3	AUTHOR'S NATIONALITY OR DOMICILE:	WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK:	
	Citizen of or { Domiciled in }	Anonymous? Yes No.	
	(Name of Country) (Name of Country)	Pseudonymous? Yes No.	
3	AUTHOR OF: (Briefly describe nature of this author's contribution)	If the answer to either of these questions is "Yes," see detailed instructions attached.	

3 Creation and Publication	YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED:	DATE AND NATION OF FIRST PUBLICATION:
	Year ... 1978	Date April 18 1978
	(This information must be given in all cases.)	(Month) (Day) (Year)
3		Nation United States
		(Name of Country)
		(Complete this block ONLY if this work has been published.)

4 Claimant(s)	NAME(S) AND ADDRESS(ES) OF COPYRIGHT CLAIMANT(S):
	WAYDE HARRISON and BONNIE ERICKSON, doing business as HARRISON ERICKSON, 95 Fifth Avenue, New York, New York 10003
	TRANSFER: (If the copyright claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.)
4	EXHIBIT 1

Complete all applicable spaces (numbers 5-9) on the reverse side of this page
Follow detailed instructions attached

DO NOT WRITE HERE
Page 1 of 2 pages

* Assigned Copyright Office deposit
account number: DAO28657

VA

23-748

EXAMINED BY: <i>[Signature]</i>	APPLICATION RECEIVED: MAY 25 1979	FOR COPYRIGHT OFFICE USE ONLY
CHECKED BY:	DEPOSIT RECEIVED: MAY 4 1979	
CORRESPONDENCE: <input type="checkbox"/> Yes	REMITTANCE NUMBER AND DATE:	
DEPOSIT ACCOUNT FUNDS USED: <input checked="" type="checkbox"/>		

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED ADDITIONAL SPACE, USE CONTINUATION SHEET (FORM VA/CON)

PREVIOUS REGISTRATION:

- Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office? Yes.....No.....**X**
- If your answer is "Yes," why is another registration being sought? (Check appropriate box)
 - ☐ This is the first published edition of a work previously registered in unpublished form.
 - ☐ This is the first application submitted by this author as copyright claimant.
 - ☐ This is a changed version of the work, as shown by line 6 of the application.
- If your answer is "Yes," give: Previous Registration Number..... Year of Registration.....

5

Previous
Registration

COMPILATION OR DERIVATIVE WORK: (See instructions)

PREEXISTING MATERIAL: (Identify any preexisting work or works that this work is based on or incorporates.)

.....

.....

.....

MATERIAL ADDED TO THIS WORK: (Give a brief, general statement of the material that has been added to this work and in which copy right is claimed)

.....

.....

.....

6

Compilation
or
Derivative
Work

DEPOSIT ACCOUNT: (If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.)

Name: Abeles, Clark and Osterberg

* 4503

Account Number

CORRESPONDENCE: (Give name and address to which correspondence about this application should be sent.)

Name: Abeles, Clark & Osterberg
4 East 52nd Street

Address: New York, New York 10022
(City) (State) (ZIP)

7

Fee and
Correspondence

CERTIFICATION: * I, the undersigned, hereby certify that I am the: (Check one)

☐ author ☐ other copyright claimant ☐ owner of exclusive right(s) ☒ authorized agent of: HARRISON ERICKSON

(Name of author or other copyright claimant, or owner of exclusive right(s))

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.



Handwritten signature: (X)

Typed or printed name: ROBERT C. OSTERBERG

Date: May 24, 1979

8

Certification
(Application must be signed)

JOHN S. CLARK

ABELES CLARK AND OSTERBERG

(Name)

4 East 52nd Street

(Number, Street and Apartment Number)

New York, New York 10022

(City)

(State)

(ZIP code)

MAIL
CERTIFICATE
TO
25 MAY 1979
(Certificate will
be mailed in
window envelope)

9

Address
For Return
of
Certificate

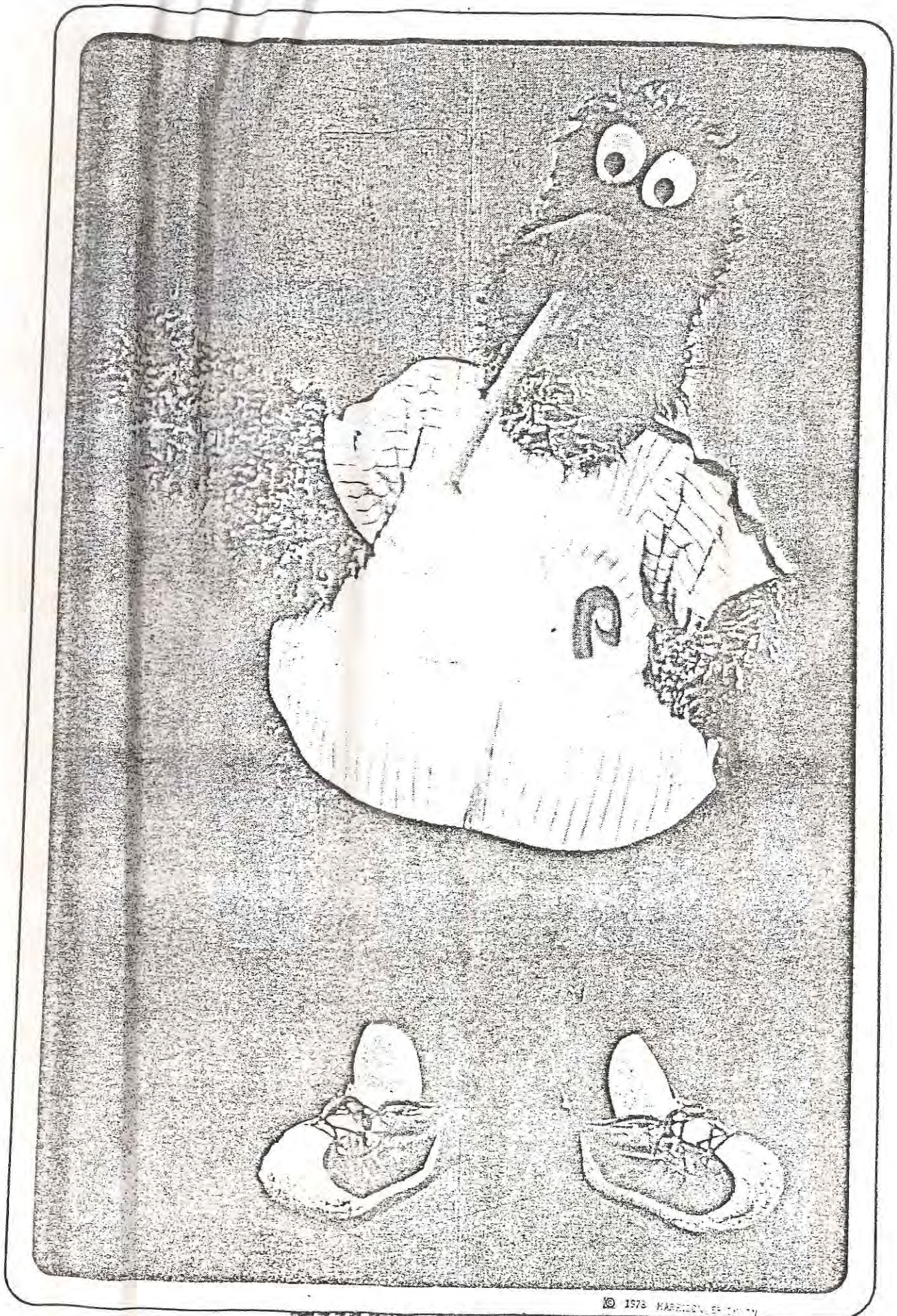
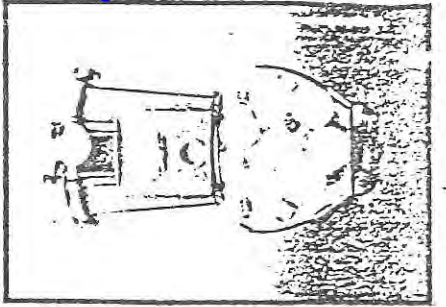


EXHIBIT 1 A

© 1978 HARRISON, SE. 10/1/78



PHANISSON
ERICSSON

The Phillies
Veterans Stadium
Broad Street and Pattison Avenue
Philadelphia, Pennsylvania 19143

Gentlemen:

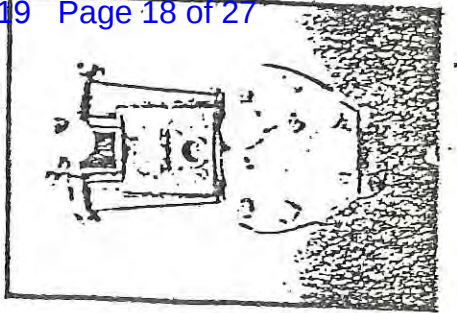
Upon your signing below under the wording "CONSENTED
AND AGREED TO", this will constitute our agreement as
follows:

1. We hereby grant to you the exclusive rights
throughout all of the territories of the world
for the term of this agreement only, to make reproductions of
our copyrighted character presently known as "Phillie Phanatic"
the subject of the agreement between us dated March 17, 1978,
in and as part of various souvenir items such as keychains,
decals, tee-shirts and dolls. (All such items are hereinafter
collectively referred to as the "Licensed Articles")

2. As an express condition precedent to your right
to make reproductions, each proposed Licensed Article shall be
submitted to us in the form in which you intend to manufacture it.
For a period of ten working days following receipt by us of each
proposed Licensed Article, we shall have the right in our sole
discretion to determine whether the proposed reproduction satisfies
our personal quality standards. You shall not manufacture any
Licensed Article of any kind unless (a) you have first submitted
to us the proposed Licensed Article and (b) we do not object to
the quality within the ten working day period. Any subsequent
modifications must first be approved by us in the same manner,
before you incorporate the changes in the Licensed Article. Our
approval of any proposed reproduction or modification shall not
be unreasonably withheld.

EXHIBIT 2

95 FIFTH AVENUE
NEW YORK, N.Y. 10003
212-929-5700



The Phillies
Page Two

3. Copies of all Licensed Articles made by you, or presently in your possession or control, shall bear copyright notice in our name in the proper location as follows:

"©1978 Harrison Erickson."

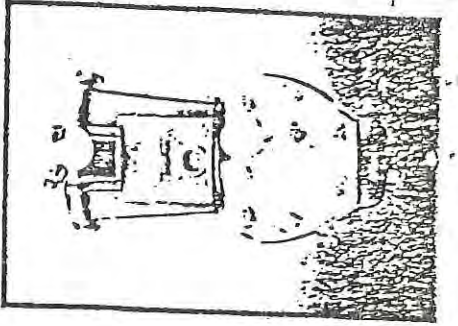
4. You shall maintain accurate books and records evidencing all of your transactions in the manufacture and sale or other distribution of all Licensed Articles. Promptly after the commencement of manufacture, you shall supply us with 5 complete copies of each Licensed Article from the first quantity manufactured by or for you.

5. You shall make the following payments to us for the right to make reproductions granted hereunder:

(a) The sum of \$5,000.00 upon execution of this agreement, and on or before July 15 of each calendar year during the term of this agreement, as an advance against all royalties otherwise payable to us pursuant to subdivision (b), infra, but which shall constitute annual minimum guaranteed compensation hereunder and is not returnable in any event.

(b) Subject to the provisions of subdivision (a), supra, royalties in a sum equal to 7% of either (i) the total cost of manufacture of each Licensed Article, or (ii) the retail selling price thereof, whichever is greater, on or before August 1 for the period ended July 15 of each year of the term of this agreement; provided, however, that no royalties shall be payable for decals and brochures distributed by you free of charge. Each of the payments referred to in this subdivision (b) shall be accompanied by a statement under oath identifying for the annual period, the Licensed Article, the total quantity manufactured, the total quantity sold, the selling price and the manufacturing cost.

95 FIFTH AVENUE
NEW YORK, N.Y. 10003
212-929-5700



**HARRISON
ERICKSON**

The Phillies
Page Three

6. Except as expressly authorized herein, and in our agreement dated March 17, 1978, you shall have no right to make any use of the Phillie Phanatic character.

7. The term of this agreement shall commence as of July 16, 1978, and shall continue through July 15, 1981. This agreement shall be automatically renewed from year to year thereafter unless either party, by written notice thirty days prior to the expiration of any one-year period, terminates the same by mailing written notice to such effect to the other party.

8. This agreement shall be construed and interpreted in accordance with the laws of the State of New York.

9. This writing constitutes the entire understanding between us, and none of the provisions herein contained shall be waived, modified or otherwise altered or discharged except by an instrument in writing signed by both of us.

10. Your signature, where indicated below, together with ours, shall constitute this a valid and binding agreement between us.

Dated: New York, New York
As of July 15, 1978

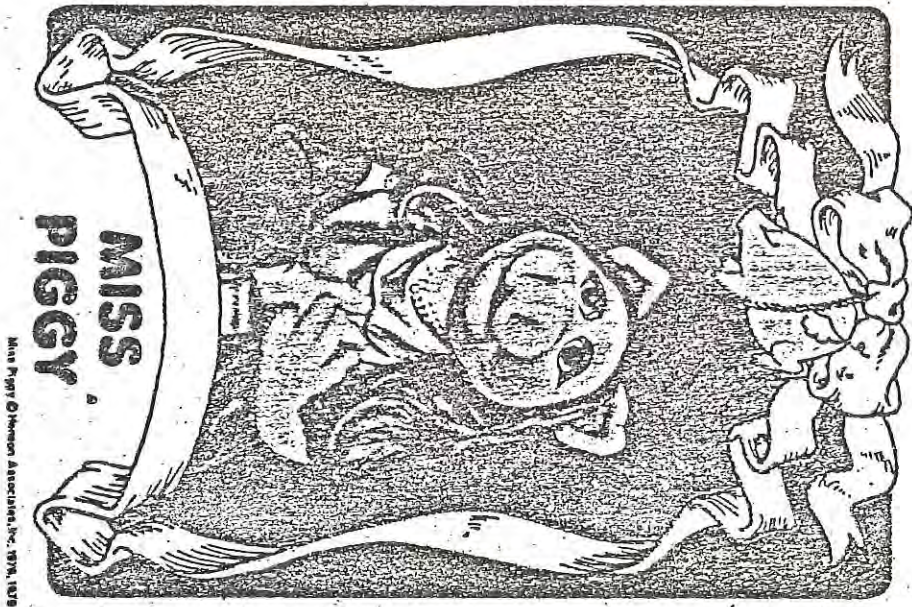
CONSENTED AND AGREED TO:
THE PHILLIES

By William J. Hill

HARRISON ERICKSON

By [Signature]

95 FIFTH AVENUE
NEW YORK, N.Y. 10003
212-929-5700



MISS PIGGY

-BORN: 1975 in The Muppets Workshop

HOME: London, New York
OWNER: Henson Associates, Inc.

TEAM: The Muppet Show

POSITION: glamorous star

VITAL STATISTICS: 36-18-36½

HITS: right

ACCOMPLISHMENTS: black and blue belt in karate

FAVORITE COLOR: green

LAST BOOK READ: "Total Pig"

QUOTE: Make that a perfect 36-18-36!

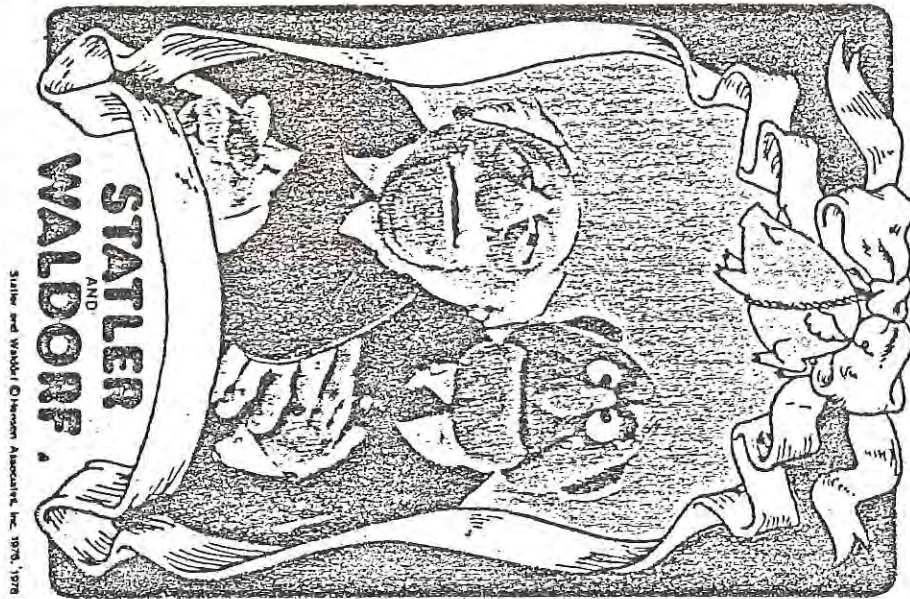
**HARRISON
ERICKSON**

95 FIFTH AVENUE
NEW YORK, NY 10003
212-929-5700

Draw by: Lynn Channing from "Dinotopia"

© HARRISON/ERICKSON 1978

EXHIBIT 3



STATLER WALDORF

BORN: 1975 in The Muppets Workshop

HOME: the balcony

OWNER: Henson Associates, Inc.

TEAM: The Muppet Show

POSITION: one-up

DRAFTED: 1898

VITAL STATISTICS: 180/90, 15/6

THROWS: insults and curves

ACCOMPLISHMENT: exist below the waist

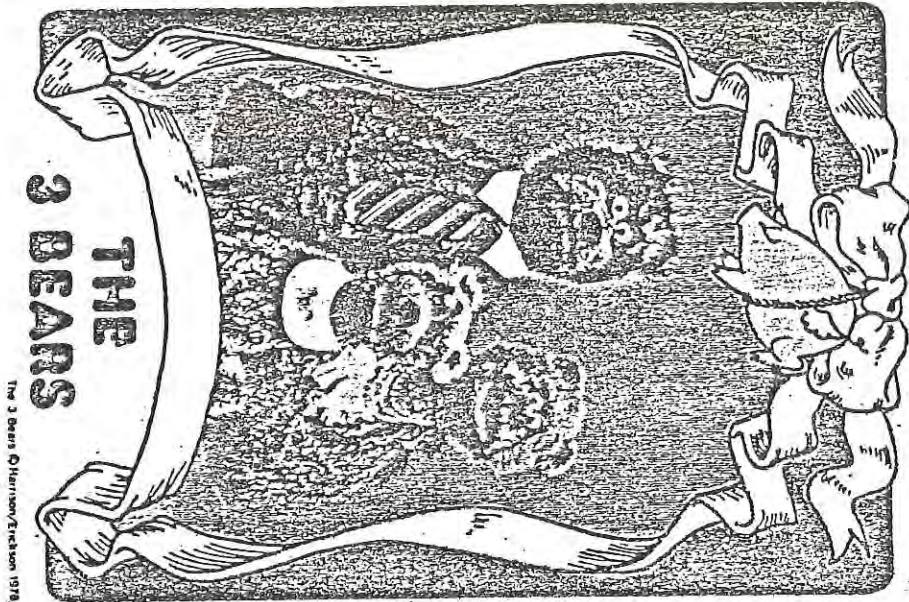
QUOTE: No, I'm the tall one.

**HARRISON
ERICKSON**

95 FIFTH AVENUE
NEW YORK, NY 10003
212-929-5700

Drawn by: Linda Cheung-Guan, Brooklyn

© HARRISON/ERICKSON 1978



THE 3 BEARS

BORN: 1977

HOME: small cottage in
the Village

OWNER: Harrison/Erickson

TEAM: HO Oats

POSITION: cereal testers

DRAFTED: Warwick, Welsh and Miller
VITAL STATISTICS: great big,
middle-sized, teeny- weeny

ACCOMPLISHMENTS: weddings,
bar mitzvahs and TV commercials

LAST BOOK READ: "3 Little Pigs"

QUOTE: *Mmmm, good.*

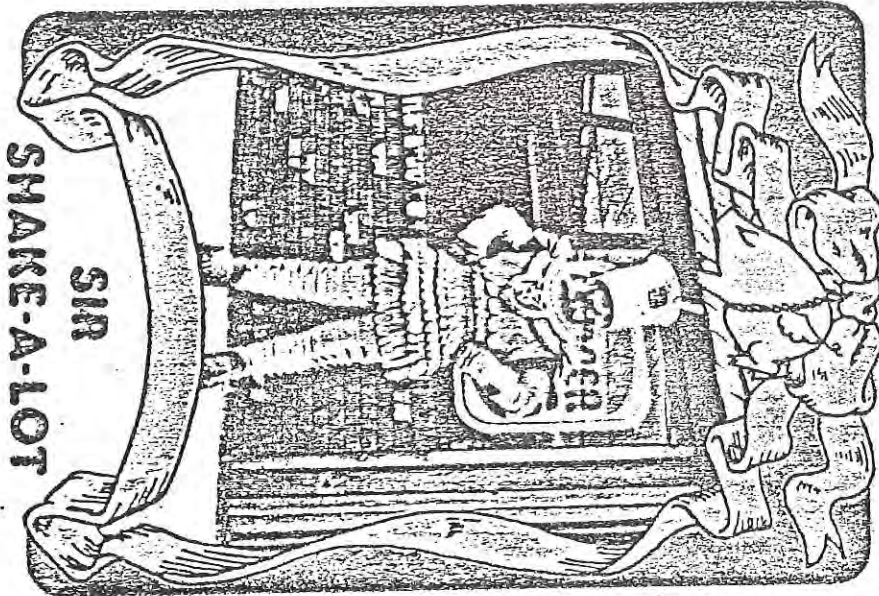


**HARRISON
ERICKSON**

95 E 11th AVENUE
NEW YORK, N.Y. 10003
212 929-8700

Drawn by: Ingmar Chermayeff & Associates

© HARRISON/ERICKSON 1978



SIR SHAKE-A-LOT

BORN: 1978

HOME: coast to coast

OWNER: Burger King

DRAFTED: J. Walter
Thompson

POSITION: on camera

VITAL STATISTICS: 6 ft. character
costume

SPECIALTY: magician's assistant

ACCOMPLISHMENT: hobnobs with

royalty
FAVORITE FLAVORS: vanilla,
chocolate, and

strawberry

QUOTE: G-r-r-real Shh-a-akcsi

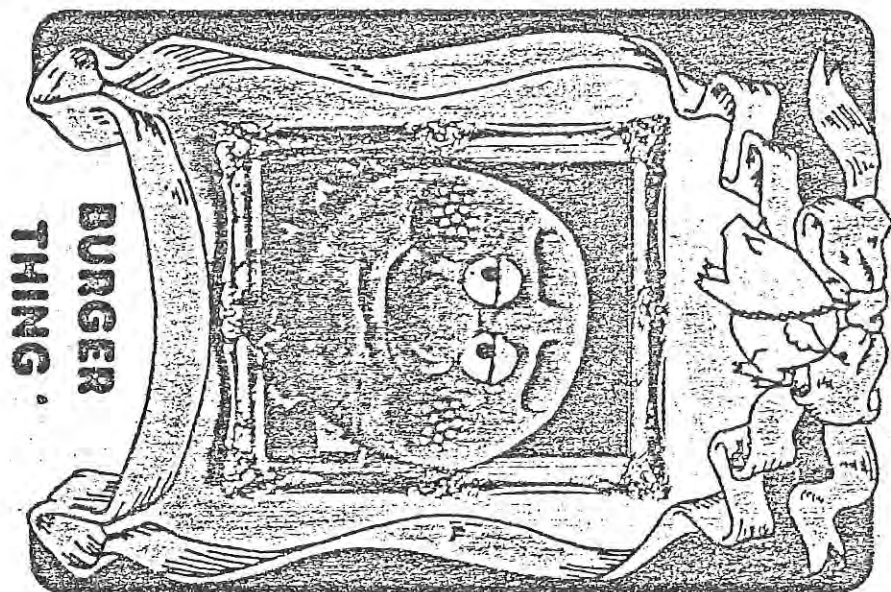


HARRISON
ERICKSON

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NEW YORK, NY 10003
212-929-5700

Drawn by Tom's Creative Dept., Brooklyn

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BURGER THING

BORN: 1978

HOME: coast to coast

OWNER: Burger King

DRAFTED: J. Walter Thompson

POSITION: top of the menu

VITAL STATISTICS: 24" x 30"

animated puppet

ACCOMPLISHMENT: hanging around

GOAL: to be relished

HOBBY: skateboarding

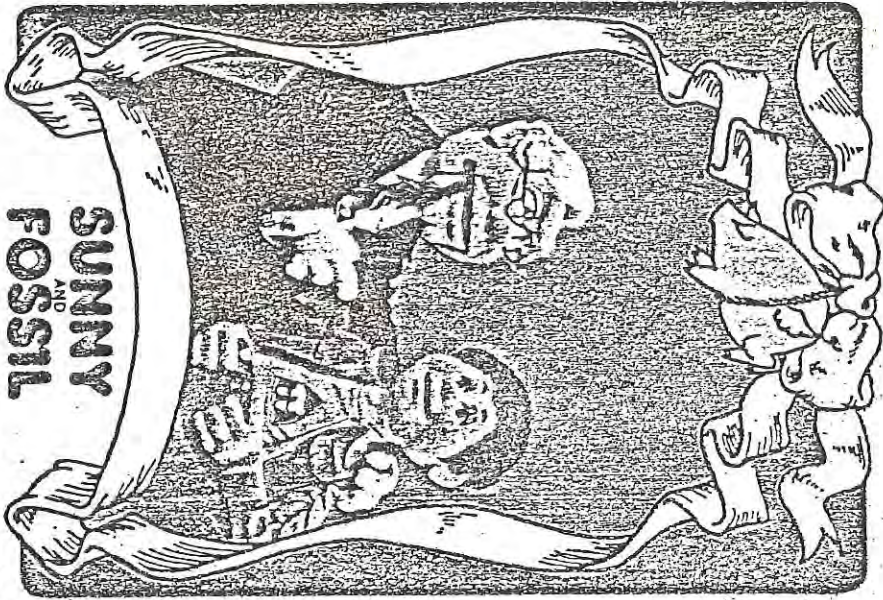
QUOTE: *Have me your way!*

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Gum by Topps Chewing Gum, Brooklyn

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SUNNY AND FOSSIL

BORN: 1977

HOME: Washington, D.C.

OWNERS: Light, Inc. and

Harrison/Erickson

TEAM: National Education Assn.

CALLING: crusaders for energy

conservation

VITAL STATISTICS: 55MPH, 68°F

ACCOMPLISHMENTS: TV spots

HOBBIES: bicycling and recycling

GOAL: 10 minutes with the President

QUOTE: *I don't know where that boy gets all his energy.*



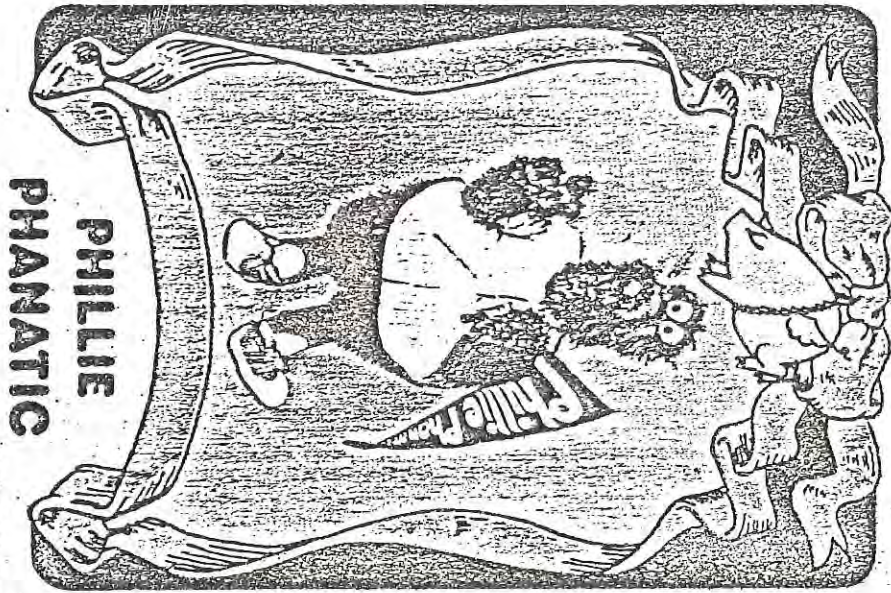
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**PHILLIE
PHANATIC**

Phillie Phanatic © Harrison/Erickson

PHILLIE PHANATIC

BORN: 1978

HOME: City of Brotherly Love

Love

OWNER: Harrison/Erickson

TEAM: Philadelphia Phillies

POSITION: designated mascot

VITAL STATISTICS: shoe size 18EE

ACCOMPLISHMENT: Gong Show

appearance

GOAL: World Series Championship

HOBBIES: disco dancing

QUOTE: I feel very lucky to be the first
of my kind in the major
leagues.

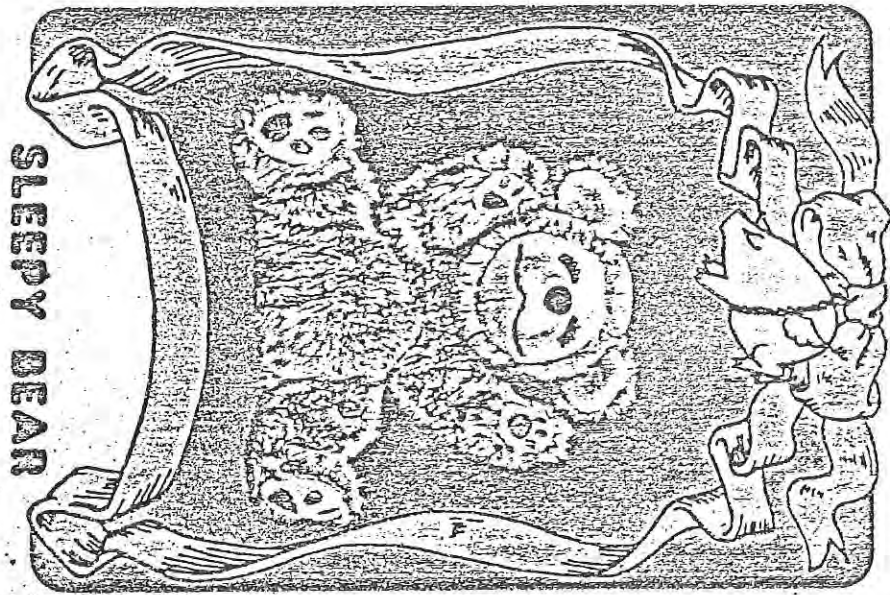


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Gum by TOPPS Chewing Gum, Brooklyn

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SLEEPY BEAR

BORN: 1977

HOME: toy chest

OWNER: Knickerbocker
Toy Co.

TEAM: Harrison/Erickson Toys

VITAL STATISTICS: 13" and 17"

soft toy

SPECIALTY: sleeping

ACCOMPLISHMENT: a top selling
unlicensed toy, 1978

FAVORITE PASTIME: hugging

children of all ages

QUOTE: Zzzzzzzzz

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Game by Toops, Chewing Gum, Brooklyn

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